

Testimony of Brendon Levesque
On behalf of the Connecticut Bar Association
**House Joint Resolution 99, Resolution Proposing An Amendment to the State
Constitution Concerning the Practices and Procedures of the Courts**
Government Administration & Elections Committee
March 23, 2009

Senator Slossberg, Representative Spallone, members of the Government Administration & Elections Committee, thank you for the opportunity to appear before you to comment on House Joint Resolution 99, Resolution Proposing an Amendment to the State Constitution Concerning the Practices and Procedures of the Courts. On behalf of the Connecticut Bar Association, I urge the committee to **not act favorably** on this resolution.

There are two reasons why the Connecticut Bar Association opposes House Joint Resolution 99. First, the resolution creates tension with the doctrine of separation of powers under Article Second of the Connecticut Constitution by interfering with the judicial branch's authority to promulgate its own rules. Second, amendments are traditionally remedies of last resort, and where as here, there is no fundamental crisis, there is no need for an amendment.

Before 1818 there was no separation of powers doctrine in Connecticut. The General assembly, for the most part, wielded all the power in the state. When the Constitutional Convention was convened in 1818, the real interest and controversy surrounded questions of religious freedom, independence of the judiciary, and suffrage. The subject of judicial independence was the subject of much debate. One of the results of the 1818 convention was the creation of a separation of powers where previously there had been none. Ultimately, the constitution separated the three branches of government and to put them on equal terms. This was done in Article Second, which expressly provides for both the distribution and the separation of powers among the three branches of Connecticut's government. The separation of powers doctrine provides that the action of one branch of government will be declared unconstitutional if: (1) it assumes powers that belong exclusively to another branch; (2) if it confers duties on one branch that belong exclusively to another branch, or; (3) if it confers duties on one branch that interfere with the orderly performance of that branch's essential function. Separation of powers is vital to the strength and effectiveness of any democratic government, including Connecticut's government.

As written, House Joint Resolution 99 would interfere with the authority of the judicial branch and its ability to promulgate its own rules. This amendment gives authority for the legislative branch to review the judicial branch's operational and procedural rules. Any element of legislative authority over the judicial system is unnecessary. The Judicial Branch's intimate familiarity and knowledge of how the court system functions puts it in the best position to promulgate rules. Moreover, the judicial system is very open to the public and should not require approval from the legislature to operate. For example, public hearings are held to provide an opportunity for people to

speak on behalf of newly proposed rules and amendments and several judicial committee meetings are open to the public. Further, the Judicial Branch is the only non-political branch of government. Involving the legislative branch in the judicial rulemaking process creates three problems. First, it compromises the independence of the Judicial Branch. Second, it opens up the door to the possibility of decisions being influenced by the tides of political bias. Finally, it creates the possibility of significant delays in implementing new rules.

There is no need for the amendment. The Constitution is the foundation of our government. It creates and defines the roles of each branch of government and provides the authority for those branches to exercise that authority. If you analogized Connecticut's government to a house, the Constitution would be the foundation with the three branches of government and the people making up the framing, plumbing, exterior, etc. As any builder will tell you, the foundation of a house is essential because it provides the base upon which the house is constructed. If that base is weakened in any way, the integrity of the structure is threatened. Thus, if changes are going to be made, the owner should consider making changes to the non-foundational elements before deciding to make substantive changes to the foundation. Changes to the foundation should only be made when all other avenues have been explored and there is some fundamental crisis which the current structure cannot effectively accommodate. There is no such fundamental crisis today.

For decades the general assembly and the judicial branch have worked together on issues of court practice and procedure. Although few and far between, there have been inconsistencies between the Practice Book and statutes and when these inconsistencies have occurred, the two branches have worked together to ameliorate the problem by either amending the rule or by requesting amendments to the statutes. For example, sixteen sections of the Practice Book dealing with family matters were amended in light of the legislature's authorization of Civil Unions. Under the current system, the branches have worked well together in addressing potential issues. There is no reason to change things now.

In fact, even in 2006, in light of the circumstances surrounding the super sealing of cases and the delay in the release of the G.A. 7 case the legislature defeated a proposal similar to House Joint Resolution 99. If the legislature didn't believe that there was a fundamental crisis then, there certainly isn't one now especially considering the changes effectuated by the Judicial Branch. Led by acting Chief Justice Borden, the Judicial Branch undertook massive steps to enhance accountability to the public by increasing the openness, transparency, and public accessibility of the courts. That trend has been continued by current Chief Justice Chase Rodgers.

For all the reasons set forth herein, I urge the committee to reject House Joint Resolution 99. Thank you, again, for the opportunity to appear and testify before you today. I would be pleased to answer any questions you may have.